

UNAPPROVED MINUTES
CITY OF MILPITAS

Minutes:	Regular Meeting of Milpitas City Council (Including Joint Meeting with Redevelopment Agency)
Date of Meeting:	December 17, 2002
Time of Meeting:	6:30 p.m. (Closed Session) 7:30 p.m. (Regular Session)
Place of Meeting:	Council Chambers, City Hall

CALL TO ORDER Mayor Esteves called to order the regular meetings of the Milpitas City Council at 6:35 p.m.

ROLL Present were Mayor Esteves, Vice Mayor Dixon, and Councilmembers Gomez, Livengood, and Polanski.

CLOSED SESSION Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following item listed on the agenda.

CONFERENCE WITH LABOR NEGOTIATOR

(Pursuant to Government Code Section 54957.6)

Agency Negotiator: Cherie Rosenquist

Employee Organizations: MEA

Mayor Esteves adjourned the meeting to closed session at 6:36 p.m.

The City Council meeting reconvened at 7:30 p.m. with Mayor Esteves presiding and Vice Mayor Dixon and Councilmembers Gomez, Livengood, and Polanski present.

CLOSED SESSION ANNOUNCEMENTS There were no closed session announcements.

PLEDGE Mayor Esteves led the Council and audience in the Pledge of Allegiance.

MINUTES MOTION to approve the minutes of December 3 and December 9, 2002, as submitted.

M/S: Dixon, Livengood.

Ayes: 5

SCHEDULE Councilmember Polanski reported the January 1st Community Advisory Commission meeting had been reschedule for January 8, 2003, and she thought the Commission Recognition Dinner was scheduled for January 30 and not the 31st as indicated on the schedule. City Manager Wilson confirmed that the recognition dinner would be on the 30th. Councilmember Polanski further inquired if the DARE graduations should be included on the schedule. Vice Mayor Dixon explained that the DARE graduations normally were not listed because, on occasion, the schedule changes.

MOTION to approve the schedule of meetings for December and January as amended.

M/S: Livengood, Dixon.

Ayes: 5

PRESENTATIONS Mayor Esteves announced that unfortunately Cathy Creswell, Deputy Director of the California Department of Housing and Community Development could not be present tonight and her presentation would be rescheduled for a future Council meeting.

Mayor Esteves asked Geoffrey Crews to join him at the podium and presented a commendation commending Geoffrey for his achievement in attaining the rank of Eagle Scout.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks be limited to two minutes or less and noted that the Clerk would be using the timer to indicate when two minutes were up.

Paul Hay said he wanted to let his supporters know that he did go forth with a recount last Wednesday on the City Council election because he did have some concerns about the procedures at the Registrar of Voters' Office and because of the closeness of the election; the vote turned out to be exactly the same as was certified and he wanted to let everyone know.

Elena Lawson expressed her opinion about comments made at the December 3, 2002, Council meeting by Councilmember Polanski stating that it was a time for celebrating the accomplishments of outgoing Mayor Henry Manayan and Councilmember Jim Lawson, a night to celebrate new beginnings, and instead Ms. Polanski turned it into a vindictive vendetta against someone who dared to run a campaign against her. Ms. Lawson said Councilmember Gomez ran a campaign in the open with the help of a reputable campaign consultant who lived in this valley for over 21 years and who had advised campaigns for people like Barbara Lee, Pete McHugh, Bob Livengood, Chuck Reed, and District Attorney George Kennedy. Ms. Lawson further stated Councilmember Gomez grew up in Milpitas and interacts with community members and organizations at the local, state, and national level on a daily basis and sometimes the truth needs to be published. Ms. Lawson said people need to know that Ms. Polanski uses her First Amendment Rights to accuse elected officials of being Communists because they disagreed with her. The City Clerk announced that two minutes were up. Ms. Lawson said she had about a minute left. Mayor Esteves said he was sorry but he had to be consistent with speakers because there would be more speakers, and Ms. Lawson was welcome to give the Council a copy of her speech. Ms. Lawson said she felt like her family had given 20 years to this City and she knew that other people at the last meeting got to talk a lot more than two minutes. Mayor Esteves said maybe Ms. Lawson's son could continue if he wanted.

Peter Lawson finished his mother's speech stating that people need to know that Ms. Polanski accuses elected officials of having hit men and referred to letters, memos, and emails published in the Milpitas News and emailed to friends who forwarded them to other people. Mr. Lawson further read that we are looking to you to begin the healing process and wished everyone the happiest holidays and peace in the year to come.

David Richerson said returning Councilmembers and City staff already knew the story behind the paving stone he placed on the podium but for the two new Councilmembers, he hoped they would remember that true cold, hard facts are out there and they are not necessarily what you hear from your co-workers, in the staff reports, or see or have brought before you by applicants; all too often they are out there laying on the ground and brought to you by a member of the community and he hoped they would keep that in mind. Mr. Richerson further stated that as far as things existing and not existing, he wished Vic Ajlouny was just as much a myth as his paper was and he certainly was a myth when Mr. Richerson pulled his endorsement of Armando Gomez who denied even knowing Vic Ajlouny at the time.

Dean Bergquist said he has been a resident of Milpitas since September 2001, worked out at the Milpitas Sports Center from November 2001 to September 2002; in August 2002 he handed a female staff member at the Sports Center his business card with the web sites "biblefrances.com" and "youthontrack.org" and if the employee didn't want it, she could have thrown it away. Mr. Bergquist complained about the way he was treated by City staff and that his privileges at the Sports Center had been taken away. Mr. Bergquist asked the Council to rectify these matters and to see that he received an apology.

ANNOUNCEMENTS

City Manager Tom Wilson announced the City had received information that the White House Fellowships were accepting applications and explained it was an opportunity for young professionals to spend one year in a first-hand working experience in the White House or associated with the Federal Government in Washington, D.C.; there was a stipend and an opportunity to participate in government at a significant level for one year; and further

information and applications could be obtained by contacting the City Manager's or the City Clerk's office.

Vice Mayor Dixon reported that George Washburn was recently honored as the "Volunteer of the Year" from the Santa Clara County Department of Emergency Services and requested that at the January 7, 2003, meeting, the Council honor Mr. Washburn as well.

Councilmember Gomez commended Public Works staff on the hours put in due to the recent storm and commended the Recreation staff on the milk and cookies with Santa event.

Councilmember Polanski reported she attended the Pre-School Kinder Kids classes and commended the Recreation Department on a job well done; she attended the Senior Advisory Commission meeting and advised that the seniors were working on a number of projects; she attended the December Community Advisory Commission meeting; and thanked all the Department staff who had met with her and provided information and updates on current projects.

Mayor Esteves commended the organizers and volunteers of the Sunnyhills breakfast event and the tree-planting event at Ben Rodgers Park that had occurred the past weekend and invited everyone to join in on the planting of more trees for the City.

AGENDA

MOTION to approve the agenda as submitted.

M/S: Dixon, Livengood.

Ayes: 5

CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar. There were no requests.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as submitted, in accordance with the staff recommendations.

M/S: Livengood, Dixon.

Ayes: 5

***5. Appointments**

Approved the Mayor's re-appointments and appointments to the following committees, commissions, and boards:

Arts Commission: Linda Hicks and Linda Rabe to three-year terms expiring October 2005; Shalini Gupta to the Alternate No. 2 position for a term expiring October 2004.

Citizens Emergency Preparedness Advisory Committee: John Pilger to the Alternate No. 2 position for a term expiring June 2003.

Community Advisory Commission: Craig Ranker to the Alternate No. 4 position for a term expiring January 2004; Charles King to the Alternate No. 2 position, for a term expiring January 2005; and Syed Mohsin to the Alternate No. 3 position for a term expiring January 2004.

Mobile Home Park Rental Review Board: Norman Azevedo to fill a vacancy for a term expiring June 2004.

Recycling & Source Reduction Advisory Committee: Donald Downey to fill a vacancy for a term expiring October 2005; Romy Dizon to fill a resident vacancy for a term expiring October 2003; and Jo Lynn Andrade-Bunnell to the Alternate No. 1 position for a term expiring 2004.

Senior Advisory Commission: Bal Daquigan, Carlos Fabregas, and Frances Woodworth (Alternate No. 1) to terms expiring December 2004.

Sister Cities Commission: Charlene Tsao to the Alternate No. 1 position for a term expiring September 2003 and Linda Downey to the Alternate No. 2 position for a term expiring September 2004.

Telecommunications Commission: William Lam to fill a vacancy for a term expiring January 2005, appoint Parveen Gupta to the Alternate No. 1 position for a term expiring January 2005, and Aaron Ettinger to the alternate No. 2 position for a term expiring January 2004.

Youth Advisory Commission: Anthony Cacao to the vacancy for a term expiring October 2003; Lordia Fok to the Alternate No. 1 position, Joseph Hall to the Alternate No. 2 position, Aysha Mohsin to the Alternate No. 3 position, and Lindsey Munzel to the Alternate No. 4 position, all for terms expiring October 2003.

- *10.
S-Zone Amendment
442 Vista Ridge Drive** Approved S-Zone Amendment (P-SA2002-104), a request to install a 5-foot high property fence and locate outdoor equipment to be screened with an enclosure, based on the findings and special conditions, dated December 17, 2002.
- *11.
Tree Lighting Costs** Approved the budget transfer from holding account HA1377-2500 to 100-167-4230 to offset the cost of the theatrical lighting for the Tree Lighting Ceremony.
- *12.
South Bay Water Recycling
Phase M-3 (Project No. 6093)**
 1. Adopted Resolution No. 7262 for initial acceptance of short section of SBWR Infill Phase M-2 & M-3 improvements, except for the delayed items.
 2. Approved Delayed Item Agreement and authorized the City Manager to execute the same, subject to approval as to form by the City Attorney.
- *13.
Fire Station Improvements
Stations 1 & 4(Project No. 8135)** Adopted Resolution No. 7263 granting final acceptance to Stoloski and Gonzales, Inc., and released the bond.
- *14.
CCS Planning and Engineering
(Project No. 4208)** Authorized the City Manager to execute the agreement amendment with CCS Planning and Engineering, Incorporated, for the Calaveras/Piedmont-Evans Intersection Improvements in the amount of \$11,204, subject to approval as to form by the City Attorney.
- *15.
CCS Planning and Engineering
(Project No. 4214)** Authorized the City Manager to execute the agreement amendment with CCS Planning and Engineering, Incorporated, in the amount of \$41,347, for Piedmont Road Bike Lane and Sidewalk Improvements at St. John's Cemetery, subject to approval as to form by the City Attorney.
- *16.
Services Agreement
Cayenta, Inc.** Authorized the City Manager to execute a services agreement with Cayenta, Inc. for migrating the Utility Billing System to the Utility Management System in the amount of \$149,240 plus travel and lodging expenses not to exceed \$30,000, subject to approval as to form by the City Attorney.
- *17.
Senior Nutrition Program** Approved the amended contract with the County of Santa Clara for the Senior Nutrition Program as approved to form by the City Attorney.
- *18.
Managed Health Network, Inc.** Approved renewal of the Employee Assistance Program contract with MHN for one calendar year, from January 1, 2003, through December 31, 2003, and authorized staff to pay \$31,022.28 for the total term of the contract.
- *19.
VTA Funding Agreement** Authorized the City Manager to execute the Funding Agreement with VTA for the use of TFCA funds in the amount of \$250,000 for the preparation of the necessary environmental clearance documents for a bicycle/pedestrian overcrossing of the Union Pacific Railroad tracks, and approved budget appropriation of \$312,500.
- *20.
Market Value/Land
Appraisal** Authorized the City Manager to execute a contract with Smith & Associates, in the amount of \$29,500, to perform an initial appraisal of one acre of land within the City and four annual updates.

- *21.
Lift Station Grinders** Authorized the emergency purchase of the two replacement grinder units in an amount not to exceed \$75,188.58 from the manufacturer, JWC Environmental including tax and freight.
- *22.
Fire Apparatus Motor** Authorized staff to execute a sole source purchase order with Stewart & Stevenson in the amount of \$25,620, for the installation of a remanufactured motor in Engine 3 (Equipment#41).
- *23.
Air Shelter** Awarded bid for the purchase of the air shelter with Decon Equipment to the lowest bidder, Zumro, Inc., in the amount of \$16,585.34.
- *24.
Miscellaneous Vendors** Approved the following purchase requests:
 1. \$9,314.91 to Emery & Associates, Inc. for the purchase of a chemical warfare agent detector for the Fire Department to be used by first responders for identifying unknown substances in the air. Emery & Associates, Inc. was the lowest bidder of three bids received. (Funds are available from the Community Emergency Preparedness, Fire Department capital outlay budget for this purchase.)
 2. \$12,000.00 to California Conservation Corp. for the annual Fire internship program for training an intern who is interested in fire services for the Fire Department. (Funds are available from the Fire Department operating budget for this service.)
- *25.
Payroll Register** Approved the Payroll Register for the period ending November 16, 2002, in the amount of \$1,581,733.37.

PUBLIC HEARINGS

- 1.
Planned Unit Development** Assistant Planner Annelise Judd reported the item before the Council was a residential project proposal, the subject site consisted of four multi-family residential lots in the vicinity of Edsel Drive, Shirley Drive, and Dempsey Road; there was also a cross shaped open recreational area comprised of portions of the four lots; and the total area of the site was just over one acre. Ms. Judd explained that the recreation area was originally going to be developed with landscaping, a basketball court, and other asphalt paving at the same time as the apartment units; in recent years the recreational area had deteriorated; the City had received numerous complaints about the appearance of the area and the activities that were taking place there and was working with the joint owners to resolve the problems. Ms. Judd further explained the applicant was proposing a Planned Unit Development to replace the open recreation area with two apartment buildings of three units each, to create a separate lot of record for the recreational area with the resulting area of reduction for the four existing surrounding lots, and to renovate the existing apartment buildings. Ms. Judd described where the new apartment complexes would be located, the exiting pedestrian corridor would be converted to a two-way driveway which would serve the new units as well as the existing units, and the current driveways that serve the existing units would be converted to landscaping; new carports were proposed to the rear of the existing apartment buildings; and two new trash enclosures were proposed to serve both the new and the existing units. Ms. Judd reported the project density was 15.4 units per gross acre, and the proposed Planned Unit Development did conform to the City's General Plan's multi-family high density zoning; the project also conformed to building height, landscaping, open space (including usable open space), and parking requirements; and the front, side, and rear yard setbacks for the new buildings would be established through the Planned Unit Development process. Ms. Judd further explained that to receive Council approval, all Planned Unit Developments must provide a public benefit; the benefit for this Planned Unit Development was that the new development on the deteriorated recreation area eliminated a blighted area frequently used for criminal activity; staff felt that in light of the complaints received and the existing state of the recreation area, it was clear that cleaning the site and eliminating it as a hang-out for criminals and trouble makers would provide a substantial public benefit. Ms. Judd informed the Council that the project met the four Planned Unit Development requirements.

Ms. Judd reported that the Council had received a revised memo pertaining to Special Condition 15, which addressed the need for recordation of a new parcel map to establish the parcel's legality as a parcel; the revision was to add to that Special Condition to allow one other option for establishing the parcel through a Certificate of Compliance through the State Subdivision Map Act; the additional wording was "or recordation of a Certificate of Compliance."

Vice Mayor Dixon acknowledged the problem this site has been for many years and inquired if staff knew the number of surrounding units that were legal, non-conforming. Ms. Judd responded that within the subject site, which included the four surrounding parcels, those four were legal non-conforming with regard to parking standards and also useable open space (defined as being recreational space immediately adjacent to the apartment units).

Vice Mayor Dixon, referring to the proposed landscaping, inquired if it was correct that 26 twenty-four inch specimen box trees were being proposed. Ms. Judd responded staff would have to check the plans but that's what they appeared to be.

Vice Mayor Dixon, addressing the in-lieu fee, said the report states "low income" in one part and "very low income" in another part, and inquired who determined where the market for low and very low fell. Principal Housing Planner Reliford responded staff had worked with the developer who had agreed to set aside four of the existing units, and based on the existing rents, there would be a combination of very low and low income households; the applicant also appeared to be amenable to some apartment rehab with the remaining units that staff was in negotiations with. Vice Mayor Dixon inquired how many remaining units were being talked about. Mr. Reliford said there were six new units the applicant was proposing and 16 existing units, four of the existing units would have restriction agreements, and four or eight of the existing units were being looked at for CDBG funding for apartment rehab. Vice Mayor Dixon complimented staff on doing a good job.

Councilmember Livengood, addressing lighting, inquired if there was any internal lighting proposed. Ms. Judd responded she believed the applicant may be placing wall mounted exterior lights. Vincente Songcayawon, one of the owners/applicants, addressed the lighting issue, stating that lighting was very important for the security of the tenants, there would be no problem installing lighting on its own post, possibly one on each end or somewhere in the middle, and agreed to do whatever was necessary to address the lighting issue. Councilmember Livengood said he wanted staff to look at how the lighting patterns affected the tenants and at what could be done as it was going to be very, very dark in the project's middle area. Councilmember Livengood also stated he wanted to make sure that the building addresses were illuminated, if possible. Mr. Songcayawon gave assurance that the building addresses would be illuminated.

Mayor Esteves opened the public hearing and invited comments. There were no comments.

MOTION to close the public hearing.

M/S: Livengood, Dixon.

Ayes: 5

MOTION to approve the Planning Unit Development (P-PD2002-1) based on the recommended findings and special conditions and including a condition 23 that some type of illumination, either on the units or on poles, be provided.

M/S: Dixon, Livengood.

City Attorney Mattas stated the Council may wish to amend the conditions of approval for clarity's sake, specifically he was looking at page 2 of 4, condition 6, the first bullet point, stating there was a reference in the second line to "very low"; the Council may want to insert after that "or low" and then a similar change would be made in the final paragraph of Section

6 in the third line which currently read, "which provide that low limits" suggesting that the Council may wish to have it read "which provide that low or very low limits established by the HUD or the State limits."

Vice Mayor Dixon agreed, as maker of the motion, to include or change it to read under Condition 6, the words "low or very low" on the first bullet point. City Attorney Mattas clarified it was the reverse change on the final paragraph where it presently said "low" it should state "low or very low." Councilmember Livengood, the second to the motion, agreed with the change.

VOTE ON MOTION:

Ayes: 5

2. Solid Waste Program

Principal Civil Engineer Darryl Wong reported this item was for rate adjustments for solid waste collection services; rates were adjusted every two years based on terms identified in the contract. Mr. Wong recognized staff who had put in considerable effort in the last two months in the negotiations, particularly Barbara Daniels who would be retiring in December and this was her final negotiations. Mr. Wong further reported the agreements before the Council were the collection and disposal of solid waste and for yard trimming collection; represented a series of rate changes; and explained the key considerations that went into the negotiations for the rate changes. Mr. Wong commented that the 50% goal of diversion had been achieved in 2000 (the City achieved 56%) and further vigilance needs to be undertaken to maintain the 50% goal.

Mr. Wong further stated the City had initiated audits of BFI, in particular on certain aspects such as Household Dump Day and on the customer performance levels, which played a role in the discussions; and reviewed a list of new provisions primarily addressing customer service levels and noted that fines for non-performance were now included. Mr. Wong reported the audit findings also identified that in 1999 and 2000 incorrect tonnage was reported. Mr. Wong felt that BFI played a big role in the audit review and acknowledged that it was BFI who reported the error. Mr. Wong informed the Council that staff was recommending, as part of a new contract, that the 3,100 ton cap be eliminated so that it would not be an issue in the future.

Mr. Wong outlined the proposed rate adjustments for residential, mobile home/multi-family, and commercial customers. Mr. Wong noted that staff had discovered an error in its distributed material; in item 3 "Commercial Premises" the effective date should read January 1, 2003, not February 1, 1996.

Councilmember Gomez expressed concern for customer service, said he noticed a number of liquidated damages, and inquired how those were tracked and how complaints were received. Mr. Wong explained that as part of BFI's required reporting to the City, it must identify the type of calls received and the resolution if they were complaints; in addition, it was traditional that if a customer was not satisfied with their call to BFI, they will call the City at which point the City would intervene, thereby giving the City a mechanism for checking customer satisfaction.

Councilmember Polanski, addressing the increase for cart rental, inquired if a customer had a damaged cart, would they receive a new cart or a previously used cart. Mr. Wong stated they would receive a working cart.

Chris Valbusa, BFI Bay Area Manager, said if BFI was requested to replace a cart, it would replace the cart with an "as new" functioning cart for the service recipient.

Mayor Esteves said he was please with the zero rate increases and thanked staff.

Mayor Esteves opened the public hearing and invited comments.

David Richerson said he was very pleased to see the audit and inquired if the Council would be voting on all 21 items listed in Attachment A, the performance measures; he also hoped there was a mechanism whereby complaints could be emailed to a complaint contact person, both at BFI and the City. Mr. Richerson commented that he had two recycle containers right now sitting by his house because it was the second week of them not being picked up by BFI.

Mayor Esteves inquired as to what the City's contact number was. Mr. Wong responded staff could be contacted at 586-3347 regarding BFI.

Isaac Hughes questioned something from page 29 of the BFI contract, under "Routes, Time, and Manner of Collection" that stated the contractors shall meet commercial customer request for collection time schedules; described a situation where a vehicle had been hit at Milpitas Square by a BFI truck after 2:00 p.m. as it was leaving a garbage can in an alley way; the driver left the bin on top of a storm drain, backed up, and ran into the side of a Milpitas Square manager's vehicle; he did not feel the BFI trucks belonged in the commercial area at that time of day, and the BFI management had been asked not to permit its trucks at the Milpitas Square at that time of day. Mr. Hughes, addressing BFI service, stated the trucks were damaging property continuously and the police refuse to take reports. Mr. Hughes said he could show where there were leaking dumpsters; had seen no documentation that staff has inventoried the BFI dumpsters to see if they are leaking; complained of not being able to use the screen in the Council Chambers to show these people what he wanted them to be responsible for; asked Councilmembers Gomez and Polanski and Mayor Esteves to meet with him; asked that BFI have someone meet with him; said he had read the BFI audit and the disclaimer in it and wanted to know if the money spent on the audit that found out BFI owed the City money going to be paid back to the City by BFI; complained of not being able to find certain documents because the City hasn't updated its Records Retention Schedule; and referred to a Certificate of Destruction from BFI dated January 23, 1997 whereby 1,840 lbs. of office paper were destroyed and said he could not find in the same Records Retention Schedule book where it said that BFI has a records retention limit, they are the only line item business that does not have a schedule of records retention destruction which leaves it open to their discretion, especially when they happen to be the people who destroy our documents, and this really bothered him.

MOTION to close the public hearing.

M/S: Dixon, Polanski.

Vice Mayor Dixon, addressing the issue of recycling, described a situation in her neighborhood where people were going through everyone's recycling bins and inquired if it was illegal for anyone to remove contents from a residential recycling bin when it was on the curb. Mr. Wong responded he believed it was a designated material to be recycled by the franchise contractor, which was BFI, and believed it became BFI's property once it was set at the curb.

A representative from BFI confirmed that once the material is placed in the container at the curbside, then it becomes the property of BFI.

Vice Mayor Dixon inquired what BFI did about it, was the Milpitas Police Department notified by BFI, was it a citation for the person(s) taking recyclables. Vice Mayor Dixon asked if there was some way of reporting or possibly having a pilot program whereby someone goes by to see who is stealing from the recycling bins. Vice Mayor Dixon requested staff follow-up on information about the record retention schedule, should it be updated, what is the City doing, and what is it about.

Councilmember Polanski commented that when the City's recyclable were stolen, it also reduced the mandatory requirements. Mr. Wong said that was correct, it reduced the diversion and changed the formula and reduced the amount the City diverts. Mr. Wong said staff

encourages residents to contact staff or the Police Department whenever they find someone going through the recycle bins on the curb.

Councilmember Livengood, addressing the rate structure, said it was important to know how Milpitas compared with other communities (showed to be the 4th lowest); questioned the three below Milpitas (Santa Clara, Morgan Hill, and Fremont) and inquired if any of them were BFI accounts. Mr. Wong responded the city of Fremont was a BFI franchise. Councilmember Livengood commented that it was important to note Milpitas comes in well below the average and while there was always room for improvement, BFI over the years had always been a good provider and commended staff and BFI for working out the issues.

VOTE ON MOTION (to close the public hearing): Ayes: 5

MOTION to adopt Resolution No. 7246 for new solid waste rates and program changes.

M/S: Dixon, Livengood. Ayes: 5

MOTION to:

1. Authorize the City Manager to execute the revisions to the agreements, subject to City Attorney approval.
2. Direct staff to provide information on the records retention schedule.
3. Provide the Council with a report regarding stealing from recycling bins at the curb.

M/S: Dixon, Polanski. Ayes: 5

**3.
2003 COPS Grant**

Commander Dennis Graham reported the California State Legislature awarded \$126,726 to the City through the Citizen Options for Public Safety (COPS) Grant and no City matching funds were required. Commander Graham further reported staff was requesting that the designated funds be used to purchase equipment to finance an upgrade of the digital photography equipment, hardware and software; a message board with radar; radios with ID capability; life support manikins; periscope surveillance video camera; Simunitions; protective gear for K-9 training; traffic cones; and flashlights for guns. Commander Graham clarified that in addition to the approval of the expenditures, Council approval of a budget appropriation form was also necessary. Commander Graham said he and the Chief were available to answer any questions.

Mayor Esteves opened the public hearing and invited comments. There were no comments.

MOTION to close the public hearing.

M/S: Dixon, Polanski. Ayes: 5

Councilmember Gomez asked for confirmation that there were no ongoing costs associated with any of the items. Commander Graham responded that was correct.

MOTION to approve expenditures as recommended and the budget appropriation form.

M/S: Livengood, Dixon. Ayes: 5

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

**RA1.
CALL TO ORDER**

Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 8:56 p.m.

**RA2.
ROLL CALL**

Present were Mayor Esteves, Vice Mayor Dixon, and Agency/Councilmembers Gomez, Livengood, and Polanski.

**RA3.
MINUTES**

MOTION to approve the Redevelopment Agency minutes of December 3, 2002, including joint meeting with the City Council, as submitted.

M/S: Dixon, Gomez.

Ayes: 5

**RA4.
AGENDA**

MOTION to approve the agenda and Consent Calendar as submitted.

M/S: Dixon, Livengood.

Ayes: 5

***RA6.
ANNUAL REPORT**

Noted receipt and filed the Milpitas Redevelopment Agency Fiscal Year 2001-2002 Annual Report.

**RA5.
CIVIC CENTER
CLOSEOUT PROGRESS**

Principal Engineer Mark Rogge presented the update on the Civic Center project closeout progress on behalf of Greg Armendariz and reported the two action items before the Council were the initial acceptances of five contracts and 15 contract change orders totaling a net cost of \$8,725. Mr. Rogge noted sufficient funds were available in the project contingency for the change orders. With respect to the initial acceptances, Mr. Rogge clarified that the agenda referred to six contracts, however, Sasco had not completed their punch list and was not recommended for initial acceptance. Mr. Rogge reviewed the project budget reporting that the project contingencies balance was \$313,878.

Councilmember Livengood inquired how many more contracts were still outstanding and pending initial acceptance. Mr. Rogge responded ten remained to be closed out. Councilmember Livengood further inquired about the scope of the remaining contracts and when the ten would be resolved. Mr. Rogge responded the ten contracts included a mixture, but there was very little work left to be completed, and it was anticipated that in January all but one should be completed; one contractor has to replace some panels and that contract may have to be extended.

Councilmember Polanski inquired if the remaining work was part of the punch list. Mr. Rogge responded a substantial amount of items were punch list items. Councilmember Polanski commented, as a new member of the Council, she had watched the progress of the building and felt that staff did an outstanding job when they took over the construction management and asked Mr. Rogge to convey to staff that she thought they did a good job and was very pleased to be in the new building.

Vice Mayor Dixon commented that one of the remaining items was a humming from a fan that could be heard within Word Processing and staff was holding the contractor to task; another item had to do with losing water that was going into a wall washer light and these were some of the issues staff was going through. Vice Mayor Dixon expressed appreciation from some of her commissioners who were glad to be meeting at one location in the Committee Room, and she felt a lot of good things were happening since moving in to the building.

Mayor Esteves inquired if there was any damage at City Hall during the last storm. Mr. Rogge responded the good news was there wasn't any damage to the building from the wind, there were no roof leaks, three minor leaks were found and were being corrected, but the Christmas tree in the plaza was blown down.

MOTION to adopt the following resolutions granting initial acceptance of contract work, subject to a one-year warranty period and reducing the faithful performance bonds to 10% of each contract:

Resolution No. 7255 – Carrara Marble
Resolution No. 7256 – Enterprise Roofing Service
Resolution No. 7257 – Ireland Interior Systems
Resolution No. 7258 – Pacific Water Art
Resolution No. 7260 – Weidner Architectural Signage

and approve the 15 contract orders included in the contract change order summary sheet.

M/S: Dixon, Livengood.

Ayes: 5

**RA7.
RDA ADJOURNMENT**

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 9:08 p.m.

The City Council meeting continued.

REPORTS

**4.
Planning Commission
Appointments**

Mayor Esteves reported on November 19, 2002, the Council considered the reappointment of Deepka Lalwani, whose term on the Planning Commission expires the end of December; Paul Hay's term also expires at that time and the Council directed that both re-appointments come back tonight for the new Council to consider. Mayor Esteves further reported the Council may re-appoint the two incumbents or decide to advertise for applications and conduct interviews.

Councilmember Gomez said Mr. Hay and Ms. Lalwani were two very strong Planning Commissioners and over the past few years he had been very proud to have them representing him as a resident, but there were several reasons why there was an interview and application process; it serves the community's interest to look at everyone interested and choose the best candidates; it was important to be fair to all those interested in applying; he wanted to see everybody who is interested and be consistent with what has been done in the past, and this Council's past practice has been to conduct interviews and go through the application process.

Councilmember Polanski asked, as a new member of the Council, if someone could provide a brief overview of how this had been done in the past. Mayor Esteves asked if the City Clerk would comment. City Clerk Gail Blalock summarized the chronology of appointments since the reorganization of the Planning Commission in 1997 commenting that generally there had been an application process, the Council had conducted interviews, and then made appointments; in a couple of cases where there had been unscheduled vacancies, the Council had made appointments without interviewing; however, all appointees had participated in an interview process at one time. Councilmember Polanski said she had not received a copy of the chronology in her packet and that was why she asked the question. The City Clerk apologized for the omission.

Councilmember Livengood said it was clear the Council had over the years chosen a variety of ways to fill Planning Commission vacancies; his position had always been that he looked at each individual situation individually. Councilmember Livengood further stated he thought both Mr. Hay and Ms. Lalwani have done a very good job, both were good representatives of the community, and for his one vote, he would be happy to reappoint both without an interview process; however, if a majority of the Council wanted to open it up for interviews, that was certainly not a bad way to go, but in this case, he would certainly support the re-appointments of Mr. Hay and Ms. Lalwani to their seats.

Vice Mayor Dixon expressed her love for the Planning Commission and commented that she was appointed to the Commission without benefit of even one interview, so she had seen it go both ways. Vice Mayor Dixon said what she had learned in six years on the Council was that the selection process for the Planning Commission, the most coveted because it is the only quasi-judicial body, was very political; she thought Mr. Hay and Ms. Lalwani were two very fine, upstanding members of the community, and she would have no problem under these circumstances supporting both re-appointments.

Councilmember Polanski said now that she had an opportunity to review the chronology document, it helped a great deal; she had no difficulty or problem with either Mr. Hay or Ms. Lalwani and their service to the Planning Commission and thought they were doing an excellent job. Councilmember Polanski further stated she had watched some of the Planning

Commission meetings, they both represented us quite well; and she would be supportive of re-appointing both these fine citizens.

Councilmember Gomez said he wanted to reiterate that he had no problem with Mr. Hay or Ms. Lalwani but as a new Councilmember, he wanted to look at the market to see what was out there, it had been over a year since interviews were conducted, and he would not be supportive of re-appointing.

Mayor Esteves said he had been looking out there and he could confidently say Mr. Hay and Ms. Lalwani have both done a great job, their colleagues voted them Chair and Vice Chair, he had been in the community for a long time and knew most of the active constituents in the community and felt that he had the best Planning Commissioners, so he was supportive of appointing them tonight and saving the time for the Council and for any potential applicants.

MOTION to re-appoint Paul Hay and Deepka Lalwani to the Planning Commission for new three-year terms expiring December 2005.

M/S: Livengood, Polanski.

David Richerson said he was not present to speak on the qualifications or job of the two current Planning Commissioners; he was present to speak on the process which the Council's own chronology showed that since 1997 every time an actual seat had expired, there were interviews; every time there were appointments without interviews, they were mid-term. Mr. Richerson further stated he had been through the process three times since 1999, was glad he had the opportunity to go through it, was glad any of the 65,000 plus eligible residents had that opportunity, by using a re-appointment process for two terms at the end of the normal term expiration, the Council was completely eliminating seeing what else is out there. Mr. Richerson said the process since 1997 had not been perfect, out of the current Council, three members have interviewed every time he interviewed since 1999, out of the three currently on the Council and out of the two who just left, everyone had at one point or another either in private or in public said Dave Richerson was the most qualified applicant for a Planning Commission seat but the vote has been all over the rainbow because the process is political and to not open it up was an injustice to not get the best out there.

Paul Hay said he thought it was important for him to say some of the things he was going to say; it was important that if you have good people that know what they are doing, you hold on to them; he had spent six years on the Commission and had enjoyed his service to the City and would like to continue. Mr. Hay further stated he had interviewed six times, he believed Ms. Lalwani had interviewed three or four times and was Vice Chair, he had gotten to know Deepka quite well and believed she cared what happens in Milpitas, and asked that the Council re-appoint both of them this evening.

Deepka Lalwani said she wanted to make one correction to Councilmember Gomez's comment that it had been more than a year since the last interviews; the last interview process was done earlier this year in February, five were interviewed at that time, and she wasn't selected; the first time she was appointed was her third interview; and she had interviewed four times. Ms. Lalwani further stated she may not be the most qualified but besides qualified, the other important qualifications were passion and time and felt that of all three ingredients, she was qualified, she had the passion, and she had the time.

Mayor Esteves said his vote for Ms. Lalwani and Mr. Hay was actually his way of commending and thanking them for the service they have been giving to the City and that was why he was very comfortable in re-appointing them.

Ed Connor said when he was on the campaign trail, several people mentioned that several people on the Planning Commission had conflicts of interests; he felt these two people were qualified but believed there were others on their that should be replaced so he felt it was time to open up the process and take applications.

Councilmember Polanski inquired, because the process was political, had the Council ever considered having the Planning Commission look at the process and suggest an ordinance or some way to have the process set in stone so it wouldn't always be at the discretion of the Council; maybe there were other ways to look at it to take it out of the political arena. Mayor Esteves said he would consider a future agenda item.

Isaac Hughes said to not give other people an opportunity without knowing who would step up was a great injustice to the community and he didn't see a dire need for an immediate appointment or time constraint. Mr. Hughes further stated he hoped that if each of the Council appreciated the opportunity they had, that they allow the same opportunity they once had when they had a position of lessor authority.

Vice Mayor Dixon pointed out the reality was in these hard times people don't have the time, they may have the passion but not the time, and she and the Mayor had spent a lot of time encouraging people to apply for the City's commissions.

Mayor Esteves reminded everybody that the City had a lot of other commissions and in the process of trying to fill vacancies, he had to call people; there were lots of opportunities to serve and encouraged everyone to apply.

VOTE ON MOTION:

Ayes: 4

Noes: 1 (Gomez)

**6.
Appointments to VTA &
Terrace Gardens Board**

Mayor Esteves said that appointments to the Valley Transportation Authority and the Terrace Gardens Board of Directors resulted from the departure of Councilmember Lawson and Mayor Manayan from the Council.

MOTION to approve the Mayor's appointments to the Valley Transportation Authority Committees and the Terrace Gardens Board of Directors as follows:

Appoint Vice Mayor Dixon to serve as Alternate to the VTA Board of Directors (representing the Group 4 cities of Milpitas, Morgan Hill, and Gilroy);
Appoint Vice Mayor Dixon to the VTA Policy Advisory Committee and Mayor Esteves as Alternate;
Appoint Mayor Esteves to the BART (Silicon Valley Rapid Transit Corridor) Policy Advisory Board and Vice Mayor Dixon as Alternate;
Appoint Vice Mayor Dixon to the VTA Tasman/Capitol Policy Advisory Board;
Appoint Councilmember Polanski to the Terrace Gardens Board of Directors.

M/S: Livengood, Gomez.

Ayes: 5

**7.
City Hall Accessibility**

Councilmember Livengood said he placed this item on the agenda because he had received a number of complaints and concerns from citizens, Planning Commissioners, other Commissioners, and City staff from other buildings regarding the inaccessibility of the third floor to anybody other than those who have the key cards. Councilmember Livengood further stated that from his perspective, he had yet to hear why the third floor needs to be restricted and felt people could come off the elevator, they could be greeted by somebody, the third floor was a very important part of the way the City runs, and for perception reasons and to some degree legal reasons, he thought the third floor should be accessible. Councilmember Livengood commented that when he goes to San Jose City Hall or the County building, he can take the elevator to any floor he wants so he thought it was possible to create an opportunity to have people enter the third floor but not have accessibility to the whole floor and have the ability to walk in and say they would like to see the Mayor or City Manager or City Attorney and have access to the planners without having to sign in.

City Manager Wilson said the issue has been one of security in relation to the work spaces and the way it was handled was to secure the elevator so that it does require a card key or accompaniment but the Council could clearly establish whatever policy it chose for access to

any part of the building and staff would be pleased to comply; with the exception of the Mayor and Council offices and the City Manager/City Attorney wing, a design feature of the building was to have a one-stop first floor access to all services.

Mayor Esteves inquired where the contact point would be and expressed concern for after 5:00 p.m. and what people would do. Mayor Esteves also noted that Councilmember Livengood mentioned that at the County people can get up to the 10th floor but they get to a checkpoint and can't just go anywhere they want. City Manager Wilson responded there would have to be some process for clearing the building at 5:00 p.m. and it might be a matter of having personnel check to be sure no people were left in the building when business is over at 5:00 p.m.

Mayor Esteves commented that the number of contact points would be increased. Mr. Wilson said there would have to be an adjustment in staffing to address that during public hours, and he would be looking to the City Clerk to see what kind of adjustment would have to be made.

Councilmember Polanski said she was perplexed by the question of accessibility commenting that she remembered people complaining that the old City Hall was very confusing unless you knew what you were doing. Councilmember Polanski further stated when she first came to the new City Hall, she was astounded because it was very easy and all one had to do was go to the Information Desk so she didn't understand the issue. Councilmember Polanski said she believed the employees need to work in a safe secure area and she didn't see where any citizen doesn't have the ability to contact the Council (via email, pager, phone, City Manager's office) to make appointments; she wasn't a full-time Councilmember so if someone came up to the third floor, depending on the time of day, they wouldn't find her there; many people she spoke to did not object to signing in, she thought the accessibility in the new City Hall was greatly improved over just a few years ago and was perplexed as to why two points of contact were needed or why someone would need to wander through the building to find the people they want to talk to.

Councilmember Gomez said his feeling all along was that City Hall needs to be accessible to the public primarily because of public trust; if the public perceives us as doing the public's business behind closed doors, we won't have their trust; the other concern he had was access to public records, primarily those records in the City Clerk's Office, and read a section from the Political Reform Code stating that no conditions whatsoever should be place on anyone requesting to see public records. Councilmember Gomez said that as a candidate, he remembered requesting information from the Clerk's Office and being required to fill out a form; he felt these records should be conveniently accessible for anyone who wants them, the third floor should be opened up so that people can go up there rather than having to fill out a form and waiting ten days.

Councilmember Livengood said he wanted to make sure the City is following State law, whether or not the third floor is accessible, and inquired if people didn't have to identify themselves when requesting public records. City Attorney Mattas said that was correct.

Mayor Esteves asked staff to explain how State law was being complied with. City Clerk Blalock said she was aware of the State law requirements but was unaware of Councilmember Gomez being made to fill out a form and waiting ten days to get records from her office as that was not the practice. Ms. Blalock further stated that the only time someone is asked for a name or when it is helpful is when the records requested are stored off-site, staff may ask for a name and phone number to contact the person to let them know when the records are available; if they don't want to give a name or number, then staff just gives them an approximate time when the records will be ready. Ms. Blalock said with the exception of Mr. Hughes, she had received no complaints from the public requesting records from her office and not having their request met.

Vice Mayor Dixon commented that much thought was given to the efficiency of all employees because as a benefit to our community, we have promised to be an efficient government; part

of being efficient was to enable the work force to have an environment in which to do their work in a timely fashion and in a safe environment; then September 11th happened; and there was hardly a place in Milpitas where you can go anymore without going through some type of reception area; the third floor was set up as an executive wing on one side with two-thirds of the floor for work areas, on the first floor you can't get into the work areas, and on the second floor you can't get into the work areas. Vice Mayor Dixon further commented if there were to be some type of physical situation to enclose the area off the elevator to close off the work areas, it might be done but she just haven't heard the outcry. Vice Mayor Dixon said she goes down to the lobby and greet visitors and escorts them to her office; it was just a matter of a one stop shop; however, if a Council majority would like to look into spending more funds to come up with some type of walled-in system, she supposed it would be worth looking into.

Ed Connor said he had been around the country and the world and only about five percent or less really need access to the third floor, most of the business was done on the first floor, but if he came to see the City Council or the City Clerk, he would like to sit down in their office.

Isaac Hughes talked about problems he had with the podium and microphone, about the quick code reference books police officers carried, the definition of trespassing, the "authorized personnel only" sign on the door at the temporary City Hall at the Great Mall and how he walked through the door because nobody answered the phones in the back or was told the person he wanted to speak with was not available, agreed with Councilmember Livengood about the need to have access to a building and the importance of access to public records, and shared the definition of public servant from Black's Law Dictionary.

Deepka Lalwani said she knew it was her right and privilege but felt the decorum of the office required her to follow the rules of the office she was visiting; when she ran for City Council, she came to City Hall many times and never had to fill out a form; sometimes she made an appointment and sometimes not, but she thought the City Clerk's office went out of their way to assist her, they were always very kind and very cooperative.

Paul Hay said he would be speaking as a private citizen and as Chair of the Planning Commission, and said he concurred with Ms. Lalwani regarding the City Clerk's office commenting that they had always been very helpful and he never had to fill out a form. Mr. Hay acknowledged that he had known the City Clerk for over ten years and was known at City Hall and expressed concern over the thought of any body walking into this building unidentified and rummaging through the files of the City. Mr. Hay said he thought the law was clear, he thought it was fair to ask people to write down what documents they want pulled for them but it was not necessary to have them identify themselves and when they are asked to sign in downstairs, that puts the City in violation of State law. Mr. Hay further commented that Milpitas was unique, he had lived in San Jose for ten years and was politically active, and one of the things they don't have in San Jose was the same kind of accessibility in San Jose that we have in Milpitas because Milpitas was a very open city and urged the Council to try to expand on what the history and culture have been in Milpitas. As Chair of the Planning Commission, Mr. Hay said members of the Commission had talked with him about having access to the Planners on an informal basis as they had at the old City Hall and at the temporary City Hall and not having to go through hoops to have access at the new City Hall. Mr. Hay asked that the Planning Commissioners be given access to the Planning Department and the rest rooms behind the Council Chambers.

Councilmember Polanski commented that there seemed to be two major issues – accessibility to different floors in the building and accessibility to records; she believed there was access to people with one point of contact; agreed with some of what Mr. Hay said about Planning Commissioners needing some accessibility to the Planning Department; and what needed to be worked out was how to insure the public has access to public records in accordance with State law. Councilmember Polanski further commented that when you go to the courthouse, you do need to fill out a form for what you want. Councilmember Polanski said she didn't believe you should be able to walk in and go through the files, she liked the current set up and thought it worked well, and it seemed like both needs could be met without spending more money.

Mayor Esteves said with respect to the physical accessibility, he has a number of appointments and meetings with lots of people and he hadn't heard a lot of complaints; he wanted to be effective in his job but at the same time he wanted to protect the staff in terms of security issues.

Vice Mayor Dixon commented in response to Mr. Hay and the Planning Commission that at the temporary City Hall and the old City Hall, the Commissioners did have access to the Planning Department but when the doors were locked, the Commissioners only had a key to pick up their packets and the rest of the building was secured. Vice Mayor Dixon said she thought there were two separate issues; she could see where there could be a process without putting a name down; and if someone wanted to come up to the third floor and make an appointment, she thought they should be required to put their name down. Vice Mayor Dixon commented that as an elected official for six years and a Planning Commissioner for six years, she had been accessible and had run into people, such as Mr. Hughes, at the grocery store and in the parking lot, and talked with them. Vice Mayor Dixon said she still went back to her original comment that if the third floor was opened up completely, it would open up two-thirds of the employees on that floor to a situation we don't have any control over and that makes them separate from the rest of the organization; if the Council desired to have staff come back with estimates as to how much it would cost for some modifications to the third floor so that employees can do their jobs in a safe, secure, and efficient environment, she would be supportive.

MOTION to remove the restrictions for access to the third floor and allow citizens access without having to sign their name or get a visitor's badge.

M/S: Livengood, Gomez.

Vice Mayor Dixon said she could support the motion with a modification to secure the work force on the remaining two-thirds of the floor and only opening access to the executive wing and having staff come back with the modifications. Councilmember Polanski asked what the motion was with no amendments. Councilmember Livengood restated the motion that the restrictions on the third floor that require a card key for access be taken off the elevator so citizens can gain access to the third floor if they want to access the City Clerk or the City Manager.

VOTE ON MOTION: Ayes: 2 (Gomez, Livengood) Noes: 3

It was noted the motion failed.

MOTION to have staff come back with a plan and cost estimates for opening the third floor for public access to the executive wing and City Clerk but still securing the remaining work areas.

M/S: Dixon.

Councilmember Polanski asked if the motion also included the cost for staffing the access on the third floor. Vice Mayor Dixon said the motion did not include taking away the first contact on the first floor so if the need arose for additional support on the third floor, that would be included in the estimates.

Councilmember Polanski seconded the motion.

Councilmember Livengood said he would support the motion but wanted to make it clear that he was a little worried that this might be a self-fulfilling prophesy here that you come back with so much money and so much staff time that it's impossible, he thought it was very simple to do and he didn't think any staff needed to be added or any money spent.

VOTE ON MOTION:

Ayes: 5

**8.
Police Command Staff
Benefits**

Councilmember Livengood commented this matter was on a previous Council agenda and would grant to the unrepresented Police command staff the same benefits in terms of vacation, sick leave, and retirement as the rank and file. Councilmember Livengood said that he didn't want a situation where someone was promoted but lost benefits.

MOTION to adopt Resolution No. 7261 regarding certain benefits applicable to unrepresented sworn staff in the Milpitas Police Department.

M/S: Livengood, Dixon.

Ayes: 5

**9.
Audio-Visual Equipment
Use by the Public**

City Attorney Steve Mattas reviewed the draft policy regarding public use of audio-visual equipment during Council and Commission meetings held in the Council Chambers and Committee Meeting Room, noting that the Council had discretion to amend the policy in any way it deemed appropriate. Mr. Mattas said the draft policy reflected a prior policy adopted in 1987, provided speakers with two minutes during Citizens Forum, would allow the Council to set individual limits for other items on the agenda, and pointed out that the existing policy made it clear that comments need to relate to the items on the agenda or on the subject matter jurisdiction of the City Council. Mr. Mattas further stated the draft policy restated the purpose of the policy and also identified certain additional regulations specific to the use of the audio-visual equipment in the Council Chambers and Commission Meeting Room.

Councilmember Livengood commented that there were some things about the policy he liked and some things he didn't like. Councilmember Livengood said he thought there should be an attempt to keep presentations to two minutes and everybody should get the exact same time. Councilmember Livengood further stated some of the things he didn't like were (1) speakers during Citizens Forum being limited to verbal presentations; he felt speakers should be allowed to make non-verbal presentations as long as they stayed within the two minute time limit; (2) speakers during Citizens Forum not being able to use the City's audio-visual equipment; if a citizen comes in before and gets to staff and into the system, as long as it fits within the two minutes time limit, they should be able to use the City's equipment; and (3) prohibiting the use of private audio-visual equipment to make presentations; speakers should be allowed to use their own equipment as long as they stay within the two minute time limit. Councilmember Livengood said he didn't want to do anything that would have a chilling effect on people and felt the two-minute limit should apply to all items on the agenda and not just Citizens Forum.

Mayor Esteves said he thought speakers should also speak only once on an item and supported the time limits if the City Clerk was willing to help him monitor the time. Councilmember Polanski said she agreed with most of Councilmember Livengood and Mayor Esteves' comments and believed it was very important to stick to the two minutes for every item. Councilmember Polanski said the only thing she might suggest was allowing three minutes for organizations and group associations.

Ed Connor said he felt three or three and one-half minutes was more in line and suggested giving the public three minutes and the Council two minutes for comments.

Isaac Hughes said he agreed with Councilmember Livengood and appreciated his comments. Mr. Hughes further stated not being able to use something that allowed people to express themselves that they have probably paid for with their tax dollars was immoral. Mr. Hughes said it was intimidating to stand and speak before the Council with your back to the audience and asked that the Council do the things Councilmember Livengood suggested and let the public express themselves in a way they are comfortable.

David Richerson said he had a lot of problems with the technology issues and limitations of the policy having served on the Telecommunications Commission; the Commission went to great effort to have the maximum amount of access to the technology for everyone; he thought

the policy contained a lot of contradictions; felt the equipment should be used by everyone equally and not just applicants; people concerned about an items should have the same accessibility to the equipment; and suggested the policy be sent back and reviewed by the Information Technology staff to get a full grasp of what you have here to fully allow the public to communicate back to the public – we paid for it, let us use it.

Councilmember Gomez said he believed the public should be allowed to use the audio-visual equipment at City Hall and questioned Item 5 asking the City Attorney for a definition of defamatory. City of Attorney Mattas responded in the context of public official, if someone knowingly makes false statements, it would be defamatory. Councilmember Gomez expressed concern that if the equipment was shut down, the City could be exposed to a lawsuit and asked the City Attorney if he was comfortable with the policy. Mr. Mattas said he was comfortable following the Council's direction. Councilmember Gomez said he thought the decision to shut down a presentation should be made by the Council because they were responsible.

Ed Connor said speaking into the microphone was uncomfortable, this was the 21st century, the equipment was there and should be used. Mr. Connor further stated he understood the fact that somebody could abuse it but until it happened, address it then because a picture was worth a thousand words. Mr. Connor felt speakers should call ahead but there should be a provision for them to use the equipment.

Councilmember Livengood offered a MOTION to direct staff to bring back a revised policy that would allow speakers to use the audio-visual equipment during Citizens Forum and allow speakers to use their own devices and make non-verbal presentations during Citizens Forum as long as they remain within the time limit. Councilmember Livengood said he wasn't convinced that two minutes was the right or wrong number but was willing to look at it more. Councilmember Livengood further stated that Councilmember Polanski mentioned five minutes for organizations and may be three minutes was the right answer but he would like to talk about it more with the public.

Vice Mayor Dixon seconded the MOTION stating that she agreed with everything except she wanted to begin with two minutes.

Mayor Esteves said he wanted to be clear about the motion and re-stated that non-verbal presentations would be allowed and speakers could use the City's audio-visual equipment and private equipment as long as they remained within the two minutes. Mayor Esteves inquired if this was approved tonight, would it be effective the next Council meeting. Councilmember Livengood responded he was asking that staff bring the policy back but the two minutes could take effect immediately. Mayor Esteves said he agreed with starting with the two-minute time limit for presentations and the rest of the policy would come back.

VOTE ON MOTION:

Ayes: 5

ADJOURMENT

There being no further Council business, Mayor Esteves adjourned the Council meeting at 11:22 p.m.

Gail Blalock, City Clerk